THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.31114 of 1998

Dated:29.08.2007

Between

P.Venkateswara Rao

.....Petitioner

and

1.The Labour Court III, Hyderabad rep., by its Presiding Officer and others.

…Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.31114 of 1998

ORDER:

This writ petition has been filed against an award made in I.D.No.416 of 1993 dated 19.12.1995 on the file of the Labour Court-III, Hyderabad insofar as denying back wages to the petitioner while ordering reinstatement with continuity of service and attendant benefits.

The petitioner is the workman. Respondent Nos.2 to 4 are the Management. According to the petitioner, he joined the service of the respondents on 14.8.1987 in the post of Fitter and worked till 10.3.1992, on which date his services were terminated illegally. It is the case of the petitioner that he had put in 240 days of service within one year preceding the date of termination dated 10.3.1992 and the respondents retrenched him

in violation of the provisions under Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act'). Therefore, he approached the Assistant Commissioner of Labour. Since the matter could not be settled in conciliation, he filed a petition under Section 2-A (2) of the Act before the Labour Court-I which was transferred to Labour Court-III and re-numbered as I.D.No.416 of 1993.

Respondent-Management filed a detailed counter denying the allegations made by the petitioner. It is stated that the petitioner joined the service of 2nd respondent-Metal Equipments in the year 1989 as Fitter but not on 14.8.1987. 2nd respondent prepared seniority list of various categories of employees employed on 2.3.1992. The petitioner was at serial No.8 in the category of Fitters. It was brought to the notice of the petitioner that due to lack of orders and keen competition, the Management is not in a position to employ all labour force and

therefore, decided to rationalize the employment force and to retrench him from service and accordingly he was retrenched on 10.3.1992. He was offered one month notice pay and 15 days wages for each year of service as retrenchment compensation amounting to Rs.2825/-. But the petitioner refused to receive the same. Therefore, 2nd respondent sent the amount to the petitioner by way of demand draft through registered post. The petitioner refused to receive the same and returned the registered post. Thus, 2nd respondent complied with the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act'). The retrenchment is a bona fide one and is in accordance with the provisions of Section 25-F of the Act.

The petitioner examined himself as WW1 and marked documents Exs.W1 to W10. On behalf of the Management, MW1 was examined and Exs.M1 to M9 were marked.

After a detailed consideration of both oral

and documentary evidence, the labour Court came to the conclusion that the respondents have not complied with the requirements under Section 25-F of the Act. Though on 10.3.1992 the services of the petitioner were retrenched, the management obtained bankers cheque only on 11.3.1992. This itself shows that the petitioner has not refused to receive the same. It was sent through registered post only to cover up the story of the management that the petitioner refused to receive the same. In fact, sending the demand draft dated 11.3.1992 through registered post to an incorrect address shows the action of the respondents in retrenching the petitioner which amounts to victimization. Therefore, the labour Court directed reinstatement of the petitioner into service with continuity of service and attendant benefits but without any back wages. Aggrieved by the same, the present writ petition is filed.

Learned counsel for the petitioner

strenuously contended that it is the case of the Management that they have complied with Section 25-F of the Act and paid the wages and other compensation as required under Section 25-F of the Act, but it was found by the Labour Court that the bankers cheque was obtained only on 11.3.1992 and it was sent by registered post to an incorrect address. There was also a finding that there is violation of Section 25-F of the ID Act and, therefore, awarding of back wages was automatic. Further, there was no delay in approaching the Labour Court by filing petition under Section 2-A (2) of the Act. Therefore, denial of back wages is arbitrary and illegal.

Learned counsel for the respondents contended that when the services of the petitioner were terminated on 10.3.1992, one month salary in lieu of notice as well as 15 days wages for each year of service as retrenchment compensation was offered. Since the petitioner refused to receive the

same, bankers cheque dated 11.3.1992 was obtained and sent to him, which was returned un-served. There was no violation of provisions of Section 25-F of the Act.

Be that as it may, there was no allegation with regard to compliance of Section 25-F of the Act, but the Management has not filed any writ petition aggrieved by the award passed by the Labour Court. The present writ petition has been filed by the workman. In the facts and circumstances of the case, I am of the opinion that the Labour Court has not committed any error in directing reinstatement of the petitioner with continuity of service but without any back wages. The Labour Court did not go into the fact whether the workman was gainfully employed during the period he was out of employment and there is no evidence or any finding in this regard.

Under those circumstances, I am of the opinion that the petitioner is not entitled for any back wages as claimed. Writ petition is devoid

of merits and is liable to be dismissed.

Writ petition is accordingly dismissed. No costs.

_____

29-08-2007

rkk